

By: Williams, Janek, Madla S.B. No. 1351
(In the Senate - Filed March 10, 2005; March 21, 2005, read first time and referred to Committee on Finance; May 11, 2005, reported adversely, with favorable Committee Substitute by the following vote: Yeas 10, Nays 0; May 11, 2005, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 1351 By: Williams

A BILL TO BE ENTITLED
AN ACT

relating to the appeal of certain ad valorem tax determinations through binding arbitration.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 1, Tax Code, is amended by adding Chapter 41A to read as follows:

CHAPTER 41A. APPEAL THROUGH BINDING ARBITRATION

Sec. 41A.01. RIGHT OF APPEAL BY PROPERTY OWNER. As an alternative to filing an appeal under Section 42.01, a property owner is entitled to appeal through binding arbitration under this chapter an appraisal review board order determining a protest concerning the appraised or market value of real property if:

(1) the appraised or market value, as applicable, of the property as determined by the order is \$1 million or less; and

(2) the appeal does not involve any matter in dispute other than the determination of the appraised or market value of the property.

Sec. 41A.02. NOTICE OF RIGHT TO ARBITRATION. An appraisal review board that delivers notice of issuance of an order described by Section 41A.01 and a copy of the order to a property owner as required by Section 41.47 shall include with the notice and copy:

(1) a notice of the property owner's rights under this chapter; and

(2) a copy of the form prescribed under Section 41A.03(a)(1).

Sec. 41A.03. REQUEST FOR ARBITRATION. (a) To appeal an appraisal review board order under this chapter, a property owner must file with the appraisal district not later than the 45th day after the date the property owner receives notice of the order:

(1) a completed request for binding arbitration under this chapter in the form prescribed by Section 41A.04; and

(2) an arbitration deposit in the amount of \$500, made payable to the comptroller.

(b) A property owner who fails to strictly comply with this section waives the property owner's right to request arbitration under this chapter. A property owner who appeals an appraisal review board order determining a protest concerning the appraised or market value, as applicable, of the owner's property under Chapter 42 waives the owner's right to request binding arbitration under this chapter regarding the value of that property. An arbitrator shall dismiss any pending arbitration proceeding if the property owner's rights are waived under this subsection.

Sec. 41A.04. CONTENTS OF REQUEST FORM. The comptroller by rule shall prescribe the form of a request for binding arbitration under this chapter. The form must require the property owner to provide only:

(1) a brief statement that explains the basis for the property owner's appeal of the appraisal review board order;

(2) a statement of the property owner's opinion of the appraised or market value, as applicable, of the property that is the subject of the appeal; and

(3) any other information reasonably necessary for the appraisal district to request appointment of an arbitrator.

Sec. 41A.05. PROCESSING OF REGISTRATION REQUEST. (a) Not later than the 10th day after the date an appraisal district receives from a property owner a completed request for binding

arbitration under this chapter and an arbitration deposit as required by Section 41A.03, the appraisal district shall:

- (1) certify the request;
- (2) submit the request and deposit to the comptroller;
- and
- (3) request the comptroller to appoint a qualified arbitrator to conduct the arbitration.

(b) The comptroller may retain an amount equal to 10 percent of the deposit to cover the comptroller's administrative costs.

Sec. 41A.06. REGISTRY AND QUALIFICATIONS OF ARBITRATORS.
(a) The comptroller shall maintain a registry listing the qualified persons who have agreed to serve as arbitrators under this chapter.

(b) To qualify to serve as an arbitrator under this chapter, a person must:

(1) have completed at least 30 hours of training in arbitration and alternative dispute resolution procedures from a university, college, or legal or real estate trade association;

(2) be licensed as a real estate broker or salesperson under Chapter 1101, Occupations Code, or be licensed or certified as a real estate appraiser under Chapter 1103, Occupations Code; and

(3) agree to conduct an arbitration for a fee that is not more than 90 percent of the amount of the arbitration deposit required by Section 41A.03.

Sec. 41A.07. APPOINTMENT OF ARBITRATOR. (a) On receipt of the request and deposit under Section 41A.05, the comptroller shall send the property owner and the appraisal district a copy of the comptroller's registry of qualified arbitrators and request that the parties select an arbitrator from the registry. The comptroller may send a copy of the registry to the parties by regular mail in paper form or may send the parties written notice of the Internet address of a website at which the registry is maintained and may be accessed. The parties shall attempt to select an arbitrator from the registry.

(b) Not later than the 20th day after the date the parties receive the copy of the registry or notice of the Internet address of the registry website, the appraisal district shall notify the comptroller that:

(1) the parties have selected an arbitrator and request that the comptroller appoint the selected arbitrator; or

(2) the parties were unable to select an arbitrator and request the comptroller to appoint an arbitrator.

(c) On receipt of notice from the appraisal district under Subsection (b), the comptroller shall:

(1) appoint:
(A) the arbitrator selected under Subsection (b)(1), if applicable; or

(B) any arbitrator included in the comptroller's registry, if Subsection (b)(2) applies; and

(2) send notice to the arbitrator appointed, requesting that the arbitrator conduct the arbitration.

(d) If the arbitrator appointed is unable or unwilling to conduct the arbitration for any reason, the arbitrator shall promptly notify the comptroller that the arbitrator does not accept the appointment and state the reason. The comptroller shall appoint a substitute arbitrator promptly after receipt of the notice.

Sec. 41A.08. NOTICE AND HEARING; REPRESENTATION OF PARTIES.
(a) On acceptance of an appointment to conduct an arbitration under this chapter, the arbitrator shall set the date, time, and place of a hearing on the arbitration. The arbitrator shall give notice of and conduct the hearing in the manner provided by Subchapter C, Chapter 171, Civil Practice and Remedies Code. The arbitrator:

(1) shall continue a hearing if both parties agree to the continuance; and

(2) may continue a hearing for reasonable cause.

(b) The parties to an arbitration proceeding under this

chapter may be represented by an attorney or by a property tax consultant, real estate appraiser, or real estate broker acting under power of attorney. An employee of the appraisal district may represent the appraisal district in the arbitration proceeding. A person may not serve as a party representative, present evidence, or make arguments in an arbitration proceeding under this chapter unless the person:

- (1) is an employee of the appraisal district;
- (2) is a licensed attorney in this state;
- (3) is licensed as a real estate broker or salesperson under Chapter 1101, Occupations Code, or is licensed or certified as a real estate appraiser under Chapter 1103, Occupations Code; or
- (4) is a property tax consultant registered under Chapter 1152, Occupations Code.

Sec. 41A.09. AWARD; PAYMENT OF ARBITRATOR'S FEE. (a) Not later than the 20th day after the date the hearing under Section 41A.08 is concluded, the arbitrator shall make an arbitration award and deliver a copy of the award to the property owner, appraisal district, and comptroller.

(b) An award under this section:

(1) must include a determination of the appraised or market value, as applicable, of the property that is the subject of the appeal;

(2) may include any remedy or relief a court may order under Chapter 42 in an appeal relating to the appraised or market value of property;

(3) shall specify the arbitrator's fee, which may not exceed the amount provided by Section 41A.06(b)(3);

(4) is final and may not be appealed except as permitted under Section 171.088, Civil Practice and Remedies Code, for an award subject to that section; and

(5) may be enforced in the manner provided by Subchapter D, Chapter 171, Civil Practice and Remedies Code.

(c) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is nearer to the property owner's opinion of the appraised or market value, as applicable, of the property as stated in the request for binding arbitration submitted under Section 41A.03 than the value determined by the appraisal review board:

(1) the comptroller, on receipt of a copy of the award, shall refund the property owner's arbitration deposit, less the amount retained by the comptroller under Section 41A.05(b);

(2) the appraisal district, on receipt of a copy of the award, shall pay the arbitrator's fee; and

(3) the chief appraiser shall correct the appraised or market value, as applicable, of the property as shown in the appraisal roll to reflect the arbitrator's determination.

(d) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is not nearer to the property owner's opinion of the appraised or market value, as applicable, of the property as stated in the request for binding arbitration submitted under Section 41A.03 than the value determined by the appraisal review board:

(1) the comptroller, on receipt of a copy of the award, shall:

(A) pay the arbitrator's fee out of the owner's arbitration deposit; and

(B) refund to the owner the owner's arbitration deposit, less the arbitrator's fee and the amount retained by the comptroller under Section 41A.05(b); and

(2) the chief appraiser shall correct the appraised or market value, as applicable, of the property as shown in the appraisal roll to reflect the arbitrator's determination if the value as determined by the arbitrator is less than the value as determined by the appraisal review board.

(e) The comptroller by rule may prescribe a standard form for an award and may require arbitrators to use the award form when making awards under this chapter.

Sec. 41A.10. PAYMENT OF TAXES PENDING APPEAL. (a) The

pendency of an appeal under this chapter does not affect the delinquency date for the taxes on the property subject to the appeal. A property owner who appeals an appraisal review board order under this chapter shall pay taxes on the property subject to the appeal in an amount equal to the amount of taxes due on the portion of the taxable value of the property that is not in dispute. If the final determination of an appeal under this chapter decreases the property owner's tax liability to less than the amount of taxes paid, the taxing unit shall refund to the property owner the difference between the amount of taxes paid and the amount of taxes for which the property owner is liable.

(b) A property owner may not file an appeal under this chapter if the taxes on the property subject to the appeal are delinquent. An arbitrator who determines that the taxes on the property subject to an appeal are delinquent shall dismiss the pending appeal with prejudice. If an appeal is dismissed under this subsection, the comptroller shall refund the property owner's arbitration deposit, less the amount retained by the comptroller under Section 41A.05(b).

Sec. 41A.11. POSTAPPEAL ADMINISTRATIVE PROCEDURES. An arbitration award under this chapter is considered to be a final determination of an appeal for purposes of Subchapter C, Chapter 42.

Sec. 41A.12. USE OF PROPERTIES AS SAMPLES. An arbitrator's determination of market value under this chapter is the market value of the property subject to the appeal for the purposes of the annual study conducted under Section 403.302, Government Code.

Sec. 41A.13. RULES. The comptroller may adopt rules necessary to implement and administer this chapter.

SECTION 2. As soon as practicable after the effective date of this Act, but not later than January 1, 2006, the comptroller shall:

(1) prescribe the model form for an arbitration request as provided by Section 41A.04, Tax Code, as added by this Act; and

(2) establish a registry of qualified arbitrators as provided by Subsection (a), Section 41A.06, Tax Code, as added by this Act.

SECTION 3. This Act takes effect September 1, 2005.

* * * * *